in the interest of holders of negotiable paper. See *Evans* v. *Roanoke Savings Bank, supra.*

NEUTRALITY LAWS—MILITARY EXPEDITION—WHAT CONSTITUTES.—Defendants conspired to destroy the Welland Canal in Canada, which was being used for the transportation of troops and military supplies by the king of Great Britain and Ireland, with which Prince the United States was then at peace. The conspirators were not organized as a military band; but they procured their supplies and had their base of operations in this country. *Held,* this constitutes a military expedition. *United States* v. *Tauscher,* 233 Fed. 597.

The federal courts have from time to time dealt with the question of military expeditions. The chief point of difference in their interpretation seems to be upon the degree of military training and organization which must be possessed by the body in order for it to be a military expedition. Some cases hold a high degree of military training and organization essential. Thus a body of men embarking with arms and ammunition for the United States were held to be embarking as individuals and not as a military expedition. *United States* v. *Pena,* 69 Fed. 983; *United States* v. *Hart,* 74 Fed. 724. But it has been held that an unorganized body of men, carrying arms and ammunition, who perfect a military organization before they reach their destination constitute a military expedition with the meaning of the statute. *Wiborg* v. *United States,* 163 U. S. 632. No particular number of men is necessary to complete the crime, nor is it necessary that such an expedition be completely organized, for the crime is completed by the first step taken in the organization or inception of such a body. *United States* v. *Ybanez,* 53 Fed. 536. It is not necessary that the men shall be drilled, uniformed or prepared for efficient service, nor organized as infantry, artillery, or cavalry. *United States* v. *Murphy,* 84 Fed. 609.

The right of the individual, as an individual, to leave this country for foreign lands with the intent of enlisting in a foreign army which is fighting against a country at peace with the United States is nowhere questioned. It is only where they join together and act in concert that they act unlawfully. *United States* v. *O'Brien,* 79 Fed. 900; *United States* v. *Murphy, supra.* It is unimportant to consider whether the expedition originated within the United States or beyond the seas, if it comes to this country *en route* to its destination. *Ex parte Needam,* Fed. Case No. 1008. Nor is it important that all the persons composing the military enterprise should be brought into contact with each other in the United States. *United States* v. *Murphy, supra.*

PAYMENT—APPLICATION—TO WHICH OF SEVERAL ACCOUNTS.—The defendant owed the plaintiff several debts, some being on open accounts and one being evidenced by a negotiable note. The debtor made several payments which totalled enough to pay the note, but which were not applied to any specific debt. In a suit to recover on the note, payment was pleaded. *Held,* the plaintiff can recover, as the payments will be applied most advantageously to the creditor. *Porter* v. *Watkins* (Ala.), 71 South. 687.

The rules of the civil and common law differ as to the application of payments, the former favoring the debtor and the latter the creditor. Both agree, however, that where the debtor owes several debts he has the right to say upon which a payment shall be applied. *Washington Natural Gas Co.* v. *Johnson,* 123 Penn. St. 576, 16 Atl. 799, 10 Am. St. Rep. 553. See *Ryan* v. *Casto* (W. Va.), 85 S. E. 553. And the creditor must apply it as directed. *Wipperman* v. *Hardy,* 17 Ind. App. 142, 46 N. E. 537; *Washington Natural Gas Co.* v. *Johnson, supra.* This is true, if the creditor accepts the payment, even though he does not actively consent to it. *Benson* v. *Reinshagen,* 75 N. J. Eq. 358, 72 Atl. 954. But the intention to apply the payment to a certain debt may be implied from the surrounding circumstances. *Cavanagh* v. *Marble,* 80 Conn. 389, 68 Atl. 853, 15 L. R. A. (N. S.) 127; *Barrett* v. *Sipp,* 50 Ind. App. 304, 98 N. E. 310.

Where the debtor does not apply the payment to any specific debt the creditor may. According to the civil law rule the application must be made within a reasonable time after the payments are received, and must be made for the debtor's benefit. 3 PAGE, CONTRACTS, §§ 1405, 1406. But the rule of the common law is that an application of the payments can be made by the creditor at any time before the suit is commenced, and that they may be applied as the creditor sees fit so long as the debtor is not actually injured thereby. *Bankers Surety Co.* v. *Maxwell,* 138 C. C. A. 345, 222 Fed. 797; *Richards* v. *Columbia,* 55 N. H. 96. Thus, the money paid him may be taken to satisfy an unsecured debt rather than a secured one. *Bankers Surety Co.* v. *Maxwell, supra.* But it cannot be applied to a debt not yet due in preference to one already due. *D'Yarmett* v. *Cobe* (Okla.), 151 Pac. 589.

When neither party has applied a payment to satisfy a particular debt, the court will make application according to the presumed intention of the parties and as equity and justice demands. *Austin* v. *Southern, etc., Ass'n,* 122 Ga. 439, 50 S. E. 382. Certain rules have been formulated by the decisions to aid in applying the payments in accordance with the intention of the parties. Thus, a payment made out of the proceeds of certain property will be applied to satisfy a lien on that property. *Howard* v. *London Mfg. Co.* (Ky.), 72 S. W. 771. And a payment will be applied to the interest before the principle. *Jones, Downs & Co.* v. *Chandler,* 13 N. M. 501, 85 Pac. 392. To an approved rather than a disputed debt. *Henderson* v. *Maysville Guano Co.,* 15 Ga. App. 69, 82 S. E. 588; *Culkin* v. *Matz* (Colo. App.), 149 Pac. 270. And when payment is made on a running account it will be applied to the oldest item of that account. *Conduitt* v. *Ryan,* 3 Ind. App. 1, 29 N. E. 160; *Briggs* v. *Steel,* 91 Ark. 458, 121 S. W. 754. And it has been held that this application will be made, even though the earliest items would be barred by the statute of limitations but for the payments. *Brown's Adm'r* v. *Osborne,* 136 Ky. 456, 124 S. W. 405.

But when there is no means of arriving at the mutual intention of the parties, their interest in the application of the payment being different, we find again the rules of the civil and common law in conflict. The rule of the civil law is that the presumed intention of the debtor

is to control, and the payment be applied to the most burdensome debt. *Clark* v. *Boarman*, 89 Md. 428, 43 Atl. 926. Thus, a debt bearing compound interest is to be satisfied, rather than one bearing simple interest. *Murdock* v. *Clarke*, 88 Cal. 384, 26 Pac. 601. Or debts secured by a judgment lien rather than unsecured debts. *Frazier* v. *Lanahan*, 71 Md. 131, 17 Atl. 940, 17 Am. St. Rep. 516. The common law, however, gives controlling force to the presumed intention of the creditor. Thus, the payment will be applied to the debt secured by the more precarious and less valuable security. *Pardee* v. *Markle*, 111 Penn. St. 548, 5 Atl. 36, 56 Am. Rep. 299. It would seem that the rules of the civil law are the more equitable, and deserve a wider application.

UNFAIR COMPETITION—SIMILAR NAMES—TITLE TO MOTION PICTURE PLAY. —The plaintiff wrote and produced a play called "The Come-Back." Later the defendant produced a photo play of the same name, but with entirely different plot and scenery. Claiming that the use of the same name constituted unfair competition, the plaintiff sued to enjoin the defendant from calling his photo play "The Come-Back." *Held*, the plaintiff is entitled to an injunction. *Dickey* v. *Mutual Film Corp. et al.*, 160 N. Y. Supp. 609.

The fundamental principles underlying the whole doctrine of unfair competition are that one person will not be allowed to palm off his goods on the public as those of another, and that everyone is entitled to the fruits of his own industry. *Dennison Mfg. Co.* v. *Thomas Mfg. Co.*, 94 Fed. 651; *Cady* v. *Schultz*, 19 R. I. 193, 32 Atl. 915, 29 L. R. A. 524, 61 Am. St. Rep. 763. A person cannot adopt as a trade mark or trade name a descriptive term; for such a term is equally applicable to all goods of that kind. *Bolander* v. *Peterson*, 136 Ill. 215, 26 N. E. 603, 11 L. R. A. 350; *Eggers* v. *Hink*, 63 Cal. 445, 49 Am. Rep. 96. And for the same reason, it seems that such a term ought not to be protected under the doctrine of unfair competition. *Travelers Ins. Machine Co.* v. *Travelers Ins. Co.*, 142 Ky. 523, 134 S. W. 877. And see *Canal Co.* v. *Clark*, 13 Wall. (U. S.) 311; *National, etc., Co.* v. *Munn's, etc., Co.*, (1894) A. C. 275. But if one uses a fancifal name to designate his product, or a descriptive name which has acquired a secondary meaning denoting the origin of the goods to which it is applied, he is entitled to the exclusive use of the name, at least as applied to goods of the same kind, in order that the public may not be deceived. *Reddaway* v. *Banham*, (1896) A. C. 199. See *Elgin Nat. Watch Co.* v. *Illinois Watch Co.*, 179 U. S. 665. Hence, one may acquire the exclusive right to use a geographical name or be prohibited from using his own name. *Dyment* v. *Lewis*, 144 Iowa 509, 123 N. W. 244, 26 L. R. A. (N. S.) 73; *Bissell, etc., Works* v. *Bissell Co.*, 121 Fed. 357. And when, after the expiration of a patent or copyright, the name used by the original manufacturer becomes public property, others using the same name to designate like articles must differentiate them from his in some way. *Merriam Co.* v. *Ogilvie* (C. C. A.), 159 Fed. 638, 16 L. R. A. (N. S.) 549; *Hill Mfg. Co.* v. *Sawyer-Bass Mfg. Co.*, 112 Fed. 144. In all cases where the name denotes the origin of the goods, it is entitled to protection against